

California Fair Political Practices Commission

MEMORANDUM

To: Chairman Getman, Commissioners Downey, Knox and Swanson

From: Hyla P. Wagner, Senior Counsel
Luisa Menchaca, General Counsel

Date: November 21, 2002

Subject: **Proposition 34 Regulations: Permanent Adoption of Regulation 18535 – Restrictions on Contributions between State Candidates**

A. Summary. Proposition 34 added to the Act section 85305 which restricts contributions between state candidates. The Commission adopted regulation 18535 on an emergency basis on August 9, 2002, to clarify the interpretation of section 85305.¹ The regulation is now before the Commission for permanent adoption with no recommended changes.

B. Section 85305. Section 85305 states as follows:

“A candidate for elective state office or committee controlled by that candidate may not make any contribution to any other candidate for elective state office in excess of the limits set forth in subdivision (a) of Section 85301.”

Section 85305 of Proposition 34 was intended to limit the movement of campaign funds between state candidates. The summary of Proposition 34 by the legislative analyst contained in the ballot pamphlet stated as follows:

“This measure repeals a provision of Proposition 208 that bans transfers of funds from any state or local candidate or officeholder to any other candidate, but establishes limits on such transfers from state candidates.”

Last Winter, questions arose concerning the application of the limit, including (1) whether the limit amount was \$3,000 across-the-board, or whether it was \$3,000, \$5,000 and \$20,000, depending on the office; (2) to which committees the limit applied; (3) when section 85305 took effect; and (4) whether the limit applied before November 6, 2002, to contributions made by legislative candidates to statewide candidates. Some of these questions were initially raised and discussed in the *Wasson* Advice Letter, No. I-02-048.

¹ The memorandum to the Commission titled Adoption of Emergency Regulation 18535, dated July 26, 2002, contains additional background and discussion about the regulation. The emergency regulation expires on December 18, 2002.

C. Regulatory Language. Paragraphs (a) and (b) of regulation 18535 clarify that the limit on contributions between state candidates under section 85305 is \$3,000 (adjusted for inflation), rather than \$3,000, \$5,000 and \$20,000 depending on the office, and that the limit applies to all state candidates.

Subdivision (c) of regulation 18535 codifies advice given in the *Dichiara* Advice Letter, No. I-02-040, that the section 85305 limit is \$3,000 in the aggregate, rather than \$3,000 from the candidate and \$3,000 from his or her committee, for a total of \$6,000. The Act and regulations define “controlled committee” in section 82016 and regulation 18217, and those definitions are applicable to section 85305, as stated in subdivision (c) of the proposed regulation.

In subdivision (d), regulation 18535 interprets section 85305 to apply to current contributions made by a state candidate and all of his or her controlled committees, regardless of whether a committee is pre-2001 or post-2001.

Paragraph (e) of regulation 18535 and the comment to the regulation state the delayed effective date for statewide candidates pursuant to Section 83.² Because November 6, 2002, has passed, the section 85305 limit is presently in effect for statewide candidates and officeholders, which makes the application of section 85305 simpler. Eventually subdivision (e) and the comment to regulation 18535 can be deleted or modified, however, we propose retaining them at this time for enforcement purposes.

D. Questions Received Since Adoption of Regulation 18535. Since adoption of regulation 18535 in August, we have been asked several questions about the application of section 85305, none of which appear to require changes to the regulation.

Shortly after adoption of the emergency regulation, two practitioners called to ask how the \$3,000 limit applied to an individual who was a legislator and was also a candidate for statewide office in 2006. Because the limits did not go into effect for statewide candidates until November 6, 2002, they wondered whether the individual was limited to making \$3,000 contributions to other state candidates from his legislative committee, but could make unlimited contributions to other state candidates from his statewide committee. Staff replied that the \$3,000 limit applied to the legislator and all of his or her controlled committees, including a statewide committee, under regulation 18535(d). Now that the limits are in effect for both legislators and statewide candidates, this question will not arise again, and therefore requires no modification to the regulation.

² Section 83, an uncodified section of Proposition 34, as amended by Stats. 2001, Ch. 241, effective September 4, 2001, provides as follows: “This act shall become operative on January 1, 2001. However, Article 3 (commencing with Section 85300), except subdivisions (a) and (c) of Section 85309, Section 85319, Article 4 (commencing with Section 85400), and Article 6 (commencing with Section 85600), of Chapter 5 of Title 9 of the Government Code shall apply to candidates for statewide elective office beginning on and after November 6, 2002.”

Another question technical assistance received was whether under section 85305 and regulation 18535, a legislator could contribute \$3,000 to a candidate's primary campaign, \$3,000 for the general election, and \$3,000 to the candidate's committee from a prior election that had debt. We advised that this interpretation was correct because the \$3,000 limit of section 85305 applies on a per election basis.

E. Recommendation. Staff recommends that the Commission approve regulation 18535 for permanent adoption.

Attachment – Regulation 18535